DOCUMENT RESUME

ED 443 248 EC 307 944

TITLE	Surrogate Parent Handbook.
INSTITUTION	Maine State Dept. of Education, Augusta. Div. of Special Services.
PUB DATE	1997-04-00
NOTE	45p.; For earlier versions, see ED 258 417 and ED 342 143.
AVAILABLE FROM	Maine Surrogate Parent Program, Department of Education, Office of Special Services, #23 State House Station, Augusta, ME 04333.
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Agency Role; *Child Advocacy; Compliance (Legal); *Disabilities; *Due Process; Elementary Secondary Education; Legal Responsibility; Parent School Relationship; *Special Education; State Standards
IDENTIFIERS	*Maine; *Surrogate Parents

ABSTRACT

This manual, which is designed for surrogate parents, social workers, and educational personnel working with the Maine Surrogate Parent Program, attempts to ensure that children without available parents or guardians are provided with equal educational opportunities. Individual sections address the following topics: program purpose, definitions, identification of children with disabilities who require a surrogate parent, appointment of surrogate parents, training of surrogate parents, rights of the surrogate parent, responsibilities of the surrogate parent, limits of the surrogate parent's responsibilities, liability, educational agency role, responsibilities of the educational agency, state agency roles, responsibilities of the state agency, reimbursement for expenses, and questions and answers. Nine appendices include relevant federal regulations, relevant Maine special education law and regulations, a checklist of suggested surrogate parent activities, a sample case record, a checklist for the individualized education program or individualized family service plan, state resources, volunteer application form, form for requesting appointment of a surrogate parent, and parental rights and procedural safeguard requirements. (DB)

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ED 443 248

SURROGATE PARENT HANDBOOK

Office of Special Services
Department of Education
Augusta, Maine 04333

April 1997

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I. PURPOSE

The Surrogate Parent Program was established to provide surrogate parents to children with disabilities whenever the natural parents or guardian of a child with a disability cannot be identified, located or when the child is in the custody of the state. Surrogate parents have all of the rights of the natural parents for educational matters, e.g. permission for evaluation and placement, release of information and request for educational hearing. The primary goal of the surrogate parent program is to ensure that all children with disabilities are provided with equal educational opportunities.

This handbook is designed for surrogate parents, social workers, and educational personnel. It establishes a framework for the Maine Surrogate Parent Program.

The input and assistance in developing this handbook provided by the many individuals including surrogate parents, special educators, Department of Human Services staff, and staff from the Office of Special Services is appreciated.

Comments are solicited which suggest improvements to the Maine Surrogate Parent Program and this handbook. Please forward suggestions to:

Maine Surrogate Parent Program
Department of Education
Office of Special Services
#23 State House Station
Augusta, ME 04333

II. DEFINITIONS

Surrogate Parent

A surrogate parent is an individual appointed by the Commissioner of the Department of Education or his/her designee to act independently on behalf of a child with disabilities or a child suspected of being a child with disabilities to safeguard the child's rights in the special education decision making process.

State Ward

A state ward, for the purpose of the Maine Surrogate Parent Program, includes children who have been committed by the court to the custody of the Maine Department of Human Services (DHS), or Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMR/SAS)or other recognized Social Service agency.

Children with Disabilities

"A Child with Disabilities" is an individual who:

a. Is between the age of birth and 20;

b. Has neither graduated from a secondary school program nor reached 20 years of age before July 1; and

c. Requires the provision of special education services in the area of mental retardation, hard of hearing, deaf, speech and language impairment, visual impairment, behavioral impairment, orthopedic impairment, other health impairment, learning disability, deaf/blind, multihandicapped, autism, traumatic brain injury, or multiples of these impairments.

Educational Agency

An educational agency, for the purpose of the Maine Surrogate Parent Program, includes school administrative units, Child Development Services Regional Sites, private day schools, residential treatment centers, or any agencies providing special education services to children with disabilities.

State Agency

For the purpose of the Maine Surrogate Parent Program, a state agency is either the Maine Department of Human Services, or the Department of Mental Health/Mental Retardation and Substance Abuse Services that has been granted legal custody of the child through the appropriate judicial process.

Caseworker

The caseworker, for the purpose of the Maine Surrogate Parent Program, is the representative of the State, or other recognized social service agency that has legal custody of the child with disabilities.

III. IDENTIFICATION OF CHILDREN WITH DISABILITIES WHO REQUIRE A SURROGATE PARENT

A. It is the responsibility of each Educational Agency (school administrative unit, regional CDS Board, private day school, residential treatment center or other agency providing educational services) to notify the Commissioner or the Commissioner's designee whenever:

1. The parents or guardian of a child who may be identified as a child with disabilities other than a state ward cannot be identified or located after reasonable effort.

    a. Parents or guardian cannot be identified when there is no record of a parent or guardian available to the educational agency.

    b. Parents cannot be located if there is no response to some combination of phone calls, letters, certified letter with return receipt, or visit to the parent's last known address.

2. A potential child with disabilities is a ward of the State of Maine.

    a. Ward of the State of Maine includes all children committed by the court to the custody of the Departments of Human Services, or Mental Health/Mental Retardation and Substance Abuse Services.

IV. APPOINTMENT OF SURROGATE PARENTS

The Commissioner of the Department of Education or his/her designee is responsible for the selection and appointment of surrogate parents.

A. Criteria for Selection

A surrogate parent shall meet the following criteria:

1. has no interests that conflict with the interests of the child being represented;

2. has sufficient knowledge and skill to ensure adequate representation of the child; and

3. not be an employee of the public agency involved in the education or care of the child. The term "public agency" includes, but is not limited to, the Department of Education, Department of Human Services, or Department of Mental Health/Mental Retardation and Substance Abuse Services, the Department of Corrections, the school administrative unit responsible for providing education to the child, an agency operated foster or group home and the school unit of residence of the student's parents. A person who otherwise qualifies to be a surrogate parent under these rules is not an employee of the agency solely because he or she is paid by the agency to serve as a foster parent.

B. Additional Considerations

The foster parent of a licensed Department of Human Services foster home shall automatically be recognized as the surrogate parent for the child with disabilities placed in his/her care, unless the foster parent declines, or identifies some interests that conflict with the interest of the child being represented.

If the Department of Human Services objects to the appointment of the foster parent as the surrogate parent, the Department of Human Services shall identify those objections in writing and shall recommend to the Department of Education an individual to serve as surrogate parent.

The Commissioner or his/her designee will consider the following for the selection of a surrogate parent:

1. The surrogate parent's place of residence and availability.

2. A surrogate parent with a cultural and ethnic background similar to the child.

3. The availability and appropriateness of the natural parent, adoptive parent, or relative.

4. The appropriateness of the child's participation in the selection of his or her surrogate.

C. Sources of Potential Surrogate Parents

Surrogate parents will be selected for appointment by the Commissioner of Education or his/her designee from the following sources, providing the individual meets the criteria set forth under Criteria For Selection, Section IV-A:

1. Natural Parent/Adoptive Parent/Relative/Foster Parent;
2. Individual recommended by the educational agency;
3. Individual recommended by the state agency;
4. Individual recruited by the Department of Education;
5. Individual recommended by the child.

The Department of Education will seek the advice of the child's caseworker and local education agency, particularly when considering the appointment of the natural, adoptive or foster parent, or relative.

D. Termination of Appointment

1. The appointment of a surrogate parent will terminate when any one of the following conditions occur:
   a. the child completes the school year (July 1 - June 30) in which he/she turns 20;
   b. the child no longer requires special education and/or related services;
   c. the child completes his/her course of study leading to a high school diploma or graduate equivalency degree; or
   d. the child is no longer in the custody of the State Agency.
2. The Commissioner of the Department of Education or his/her designee will terminate an appointment:
   a. when a surrogate parent notifies the Commissioner or his/her designee that the surrogate parent no longer wishes to serve;
   b. when the educational agency informs the Commissioner or his/her designee in writing that the surrogate is no longer eligible (e.g., the child's education is completed, the surrogate parent has become an employee of the educational agency). All reasons cited shall be documented and verified by the Department of Education;
   c. when the department having custody of the state ward notifies the Commissioner or his/her designee in writing that the surrogate parent is no longer eligible (e.g., the child has been adopted, the surrogate parent has become an employee of their

agency, the natural parents have regained custody, etc.). All reasons cited shall be documented and verified by the Department of Education;

d. when the Department of Education has reason to believe that a surrogate parent is not effectively representing the child (e.g., the surrogate parent has neither attended nor responded to notices of meetings, etc.); the child with a disability repeatedly, and over a period of time, states that he/she does not want to have the surrogate parent involved; or that the surrogate parent has a conflict of interest not previously identified. All issues shall be documented and verified by the Department of Education.

V. TRAINING OF SURROGATE PARENTS

It is the responsibility of the Department of Education to ensure that surrogate parents have appropriate training and/or comparable experience.

A. Training will consist of at least one (1) training session of two and one-half hours duration held on a regional basis. Such training will include as a minimum the following topics:

1. Introduction to special education and disabilities.

2. Introduction to early childhood development for children ages birth through 5 with surrogate parents.

3. State and Federal Special Education Law and Regulations.

4. Rights and responsibilities of surrogate parents.

5. The educational decision-making process.

6. Procedural safeguards.

B. Comparable experience in lieu of training may include one of the following:

1. Valid certification in an area of Special Education.

2. Completion of at least six (6) hours of college level courses in special education within the last three (3) years.

3. Attendance at a minimum of five (5) hours of parent training/in-service training workshops on special education and parent's rights within the last three (3) years.

4. A minimum of two (2) years experience as a participant in the Pupil Evaluation Team process.

5. Other appropriate training or experience as determined on an individual basis.

C. Individuals interested in being appointed as a surrogate parent shall specify their training and/or experience on the volunteer registration form. See Appendix VII.

D. The Department of Education will provide on-going consultation and training to surrogate parents upon request and will advise surrogate parents of other resources and consultative services available.

VI. RIGHTS OF THE SURROGATE PARENT

The surrogate parent has all the rights of the natural parent for educational matters. A summary of the parental rights accorded to surrogate parents is identified below. A full statement of rights is attached. See Appendix IX. Your school should give you a copy of this notice whenever they initiate or change services to your child.

The surrogate parent has the right:

1. to inspect, review, and to obtain copies of all records relating to the child's education,

2. to provide written consent prior to the:

   a. pre-placement evaluation; and

   b. initial placement of the child in a program providing special education and/or related services;

3. to receive written notice prior to any evaluation or change in the child's placement or program;

4. to question the appropriateness of the child's educational program and educational placement;

5. to be informed of the special education policies, programs, and services of the educational agency;

6. to all procedural safeguards including the right to seek an independent evaluation, the right to a due process hearing, and the right to initiate a complaint.

VII. RESPONSIBILITIES OF THE SURROGATE PARENT

A. The surrogate parent shall:

1. become acquainted with the child with disabilities, the child's handicapping condition and the child's educational needs through visitations to the child's school and review of the child's educational records;

2. represent the child in all Pupil Evaluation Team meetings (children 5-20), Early Childhood Team meetings (children 0-5) and other meetings relating to the identification, evaluation, and educational placement of the child and the provision of an equal educational opportunity in the least restrictive educational environment;

3. ensure the confidentiality of information and records concerning the child;

4. be able to make sufficient time available to carry out the duties of surrogate parent properly;

5. have sufficient knowledge and skills to execute these responsibilities and to seek additional consultation and training as needed;

6. maintain a file containing the child's records and a record of the surrogate parent's activity. **The surrogate parent will forward the file to the Department of Education upon the termination of their appointment as surrogate parent;**

7. notify the Commissioner or his/her designee whenever the surrogate parent has reason to believe that a conflict of interest exists with respect to his/her appointment;

8. notify the child's caseworker in writing when the surrogate parent has reason to believe that a foster home or group placement is inappropriate and the reasons why they believe this.

VIII. LIMITS OF THE SURROGATE PARENT'S RESPONSIBILITIES

1. The surrogate parent has no authority or responsibility for the care, maintenance, or financial support of the child.

2. The surrogate parent may participate with the appropriate state agency in the discussion of the selection of a foster home or group home placement. The surrogate parent has no authority or responsibility to approve a non-educational placement in a group home or foster home.

3. The caseworker responsible for the child should, whenever possible, advise the surrogate parent of a potential group home or foster home placement and, in cooperation with the surrogate parent, determine that the new placement will be able to meet the child's exceptionality.

4. It is the responsibility of the Pupil Evaluation Team or Early Childhood Team of which the surrogate parent is a member to decide that a placement in a residential treatment center is required for a child with disabilities who is a state ward.

5. The state agency shall be considered the legal parent referenced in 20-A MRSA § 5001-A for purposes of compulsory education. The surrogate parent has no authority to waive the right to education for a state ward who is a child with disabilities.

IX. LIABILITY

Any decisions or recommendations made by a Pupil Evaluation Team may be questioned by the surrogate parent or educational agency under the due process requirements of State and Federal Special Education Law and Regulations.

*Surrogate parents are covered under the Maine Tort Claims Act to the same extent as employees of the State of Maine. *See 14 MRSA* § 8001, *et seq.*

X. EDUCATIONAL AGENCY ROLE

The appointment of a surrogate parent shall not limit the rights under Maine or Federal Laws and Regulations of the educational agency or other agency responsible for the education of the child with disabilities. These rights include, but are not limited to:

1. In the course of ensuring an appropriate education, the educational agency may need to seek mediation or a due process hearing to question the recommendation of the surrogate parent relating to the child's identification, evaluation, placement or programming;

2. In the course of ensuring an appropriate education, the educational agency may need to question any action taken by the surrogate parent by contacting the Commissioner of the Department of Education or his/her designee;

3. In the course of ensuring an appropriate education, the educational agency may need to question any action taken by any representative of the state agency by contacting the caseworker supervisor, regional program manager, or Commissioner of the appropriate state agency.

XI. RESPONSIBILITIES OF THE EDUCATIONAL AGENCY

The school administrative unit, private day school, residential treatment center, or other agency responsible for the education of the child with disabilities shall:

1. ensure that state wards are accorded the same rights to equal educational opportunities as other residents of the community;

2. ensure that foster parents are informed of their role as surrogate parents for children in their care with disabilities and who require special education;

3. ensure that surrogate parents are accorded the same rights as parents when representing the educational interests of the children they are appointed to serve;

4. ensure that the surrogate parent and state agency responsible for the child are kept informed of the child's program and progress;

5. notify the Commissioner or his/her designee whenever a state ward has been identified as a child with disabilities or when a state ward has been referred to the Pupil Evaluation Team or to the Early Childhood Team and appointment of a surrogate parent is necessary. (See Appendix VIII for a copy of a request form);

6. recommend whenever possible an individual to serve as surrogate parent for an identified child;

7. notify the Commissioner or his/her designee when there is reason to believe that the surrogate parent is no longer eligible or that a conflict of interest exists.

XII. STATE AGENCY ROLE

The appointment of a surrogate parent will not limit the role of the state agency under Federal or State Laws and Regulations. The role includes:

1. requesting that the Commissioner of the Department of Education or his/her designee appoint a surrogate parent when the state agency has reason to believe that the state ward may require special education and/or related services;

2. referring a state ward to the Early Childhood Team or Pupil Evaluation Team of the educational agency in the community in which the state ward resides;

3. the right to file a complaint under 20-A MRSA § 7206 with the Commissioner of the Department of Education when the agency has reason to believe that a school administrative unit or other agency providing educational services is not in compliance with the State and Federal laws;

4. advising the Commissioner of the Department of Education or his/her designee when the state agency has reason to believe that the surrogate parent or educational agency is not functioning in the best interests of the child;

5. the right to placement of a state ward in a non-educational placement without the consent of the surrogate parent.

XIII. RESPONSIBILITIES OF THE STATE AGENCY

The state agency responsible for the care and custody of a child with disabilities shall:

1. ensure that the agency's staff and foster parents are familiar with the role and responsibilities of surrogate parents, the Pupil Evaluation Team or the Early Childhood Team process, and the Maine and Federal Special Education Regulations;

2. notify the Commissioner of the Department of Education or his/her designee whenever a state ward is identified as a child with disabilities or has been referred to the Pupil Evaluation Team or Early Childhood Team and appointment of a surrogate parent is necessary;

3. advise the Commissioner of the Department of Education or his/her designee regarding the appropriateness of a natural parent, adoptive parent, foster parent, or relative as the child's surrogate parent;

4. ensure that the surrogate parent and educational agency are provided access to evaluations and records relevant to the child's educational needs;

5. advise, whenever possible, the surrogate parent and educational agency prior to any change in foster home or group home placement of the child and seek the advice of the surrogate parent regarding any educational needs that should be considered when selecting a foster home or group home;

6. advise, as soon as possible, the surrogate parent, as well as the prior and the receiving educational agency of the non-educational change of placement of a state ward with disabilities;

7. notify the Commissioner of the Department of Education or his/her designee when there is reason to believe that the surrogate parent is no longer eligible or when a conflict of interest exists.

XIV. REIMBURSEMENT FOR EXPENSES

SURROGATE PARENTS

Reasonable and customary expenses incurred by surrogate parents in the performance of their duties shall be reimbursed at the following rates on a State of Maine Travel and Expense Account Voucher:

1. Mileage Allowance

   Surrogate parents shall be paid a mileage allowance at the current state rate for use of their personal vehicle. *Car rental approval must be obtained from the State Controller's office prior to any trip.*

2. Meals and Lodging Expenses

   Surrogate parents shall be allowed meal and lodging expenses at the current state rates. When planning trips which include meals or lodging, check with the Department of Education surrogate parent program for current approved rates.

3. Telephone Expenses

   Surrogate parents shall be allowed actual costs for telephone toll charges related to special education issues, plus applicable state and federal tax incurred. In lieu of submitting copies of their personal telephone charge statements, surrogate parents may elect to submit an itemized accounting of such calls on a Department of Education expense voucher.

4. Other Expenses

   Surrogate parents shall be allowed actual and reasonable costs for additional expenses incurred in the execution of their duties (e.g., child care, copying, etc.). Receipt required for any item exceeding five dollars ($5.00).

5. Out of State Travel

   Whenever out of state travel is being considered, surrogate parents should contact the Department of Education for instructions. All out of state travel requires prior approval, generally one month in advance of travel.

QUESTIONS & ANSWERS

1. Are all foster parents appropriate for automatic appointment as surrogate parent?

No. Privately funded therapeutic foster home parents and group home foster parents are generally considered to have a conflict of interest as surrogate parents because they are employees of the agency or facility.

2. Should all Department of Human Services foster parents be automatically appointed as surrogate parents?

No. If a child is frequently changing foster placements (e.g. more than 3 placements in one school year), a consistent state appointed surrogate parent may be more appropriate. In addition, some Department of Human Services foster parents may have a pre-existing conflict of interest (e.g. foster parent is also an employee of the child's school district).

3. Can the natural parents or other family members of a child in state custody serve as special education surrogate parents?

Yes. The natural parents are, in many cases, very appropriate as surrogate parents. When the ultimate goal of Department of Human Services custody is reunification of the family, it may be a logical first step to have the parents represent their child in educational matters.

4. Who has the responsibility to request appointment of a surrogate parent?

If the child is not in state custody but the natural parents/guardians cannot be located, the Special Education Regulations require that the responsible educational agency should request the appointment of a surrogate parent. In cases where the appointment of a surrogate parent for a state ward is necessary because of frequent moves, private agency foster placement, etc., all responsible agencies should work together to ensure that the child is represented by a surrogate parent in special education matters.

5. Can a special education director or special education teacher serve as a surrogate parent?

Yes. The expertise offered by highly trained special education personnel is often useful in complicated education cases. However, the director or teacher may not work for the public or private school responsible for that child's special education.

6. Do the duties of the surrogate parent cease when the state ward reaches 18 years of age?

No. A "child with disabilities" is defined in state law as having "neither graduated from a secondary school program nor reached 20 years of age at the start of the school year." Consequently, the surrogate parent must remain involved with his/her client as long as the child is receiving special education services.

7. If a state ward has a surrogate parent, can the child's natural parent(s) come to a Pupil Evaluation Team or Early Childhood Team or view the child's records?

Yes. Except when parental rights have been limited through court action, the natural parent(s) may participate in Pupil Evaluation Team/ Early Childhood Team meetings and have access to records but may not exercise the procedural safeguards (membership in the Pupil Evaluation Team/Early Childhood Team, right to consent/notification, right to request hearing, etc.)

8. Does the surrogate parent continue his/her duties when the child is placed in an out-of-state residential school?

Yes. The Department of Education reimburses (in accordance with allowances and regulations applicable to State of Maine employees) all expenses incurred in carrying out the duties of a surrogate parent, including travel to an out-of-state facility to view the child's program and attend Pupil Evaluation Team or Early Childhood Team meetings.

9. Does the automatic appointment provision (for DHS foster parents) affect the standing of an appointed surrogate parent?

No. An appointed surrogate parent maintains his/her relationship with that child until he/she turns 20, the student completes their special education program, or returns to parental custody; or the appointment is withdrawn by Department of Education; or the surrogate parent formally resigns.

APPENDIX I

RELEVANT FEDERAL REGULATIONS - IMPLEMENTING THE INDIVIDUALS WITH DISABILITIES ACT (IDEA)

34 CFR 300.514
Surrogate Parents - Children 3-20

(a) General. Each public agency shall insure that the rights of a child are protected when: (1) no parent (as defined in §300.13) can be identified; (2) the public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) the student is a ward of the State under the laws of that State.

(b) Duty of Public Agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method: (1) for determining whether a child needs a surrogate parent, and (2) assigning a surrogate parent to the child.

(c) Criteria for Selection of Surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies shall ensure that a person selected as a surrogate: (i) has no interest that conflicts with the interest of the child he or she represents; and (ii) has knowledge and skills that ensure adequate representation of the child.

(d) Non-Employee Requirement; Compensation. (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child. (2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d) (1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) Responsibilities. The surrogate parent may represent the child in all matters relating to: (1) The identification, evaluation, and educational placement of the student; and (2) The provision of a free appropriate public education to the child.

34 CFR 303.405
Surrogate Parents - Children 0-2

(a) General. Each lead agency shall ensure that the rights of children eligible under this part are protected if: (1) No parent (as defined in § 303.18) can be identified; (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) The student is a ward of the State under the laws of that State.

(b) Duty of Lead Agency and Other Public Agencies. The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include

a method for: (1) Determining whether a child needs a surrogate parent; and (2) Assigning a surrogate parent to the child.

(c) Criteria for Selecting Surrogates. (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies shall ensure that a person selected as a surrogate parent: (i) Has no interest that conflicts with the interests of the child he or she represents; and (ii) Has knowledge and skills that ensure adequate representation of the child.

(d) Non-employee Requirement. (1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the student. (2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) Responsibilities. A surrogate parent may represent a student in all matters related to: (1) The evaluation and assessment of the child; (2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews; (3) The ongoing provision of early intervention services to the child; and (4) Any other rights established under this part.

34 CFR 300.13
Parent

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with §300.514. The term does not include the State if the child is a ward of the State.

NOTE: The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

APPENDIX II

RELEVANT MAINE SPECIAL EDUCATION LAW AND REGULATIONS

LAW
20-A MRSA §7201

The policy of the State for the education of exceptional students is as follows.

1. **Equal educational opportunities**. All students shall be provided with equal educational opportunities and all school administrative units shall provide equal educational opportunities for all exceptional students.

2. **Least restrictive education alternative.** An exceptional student shall be educated with students in regular programs to the maximum extent possible.

   A. Educational opportunities for an exceptional student shall be provided by means of the addition of appropriate supportive assistance to regular educational programs.

   B. Removal of an exceptional student from the regular educational environment shall occur only if the nature or severity of the exceptionality is such that the student's education cannot be satisfactorily accomplished in:

      (1) Regular classes with the use of supplemental aids and services; or
      (2) Self-contained classes within the regular school programs.

   C. An exceptional student may be placed in a residential school or institution, or in a private day school or program, only after supporting evaluative data justifying the placement have been submitted to and approved by the commissioner.

3. **Deaf exceptional students.** An exceptional student, diagnosed as deaf, shall be educated with regular students whenever possible and shall be educated under the principle of the least restrictive educational alternative as set forth in state laws and rules and federal laws and regulations.

4. **Parent's right to a member of the team.** Parents, surrogate parents or guardians have the right to be a member of the team which will carry out duties and responsibilities in accordance with rules established by the commissioner.

5. **Blind students; Braille instruction.** All students may receive instruction in Braille reading and writing as part of their individualized education plans. A student may not be denied the opportunity of instruction in Braille reading and writing solely because the student has some remaining vision. If Braille is not provided to a student who is blind, the reason for not incorporating Braille in

the individualized education plan must be documented in the individualized education plan.

6. **Participation in cocurricular activities.** Eligibility for an exceptional student to participate in cocurricular activities may not be denied solely because the student is enrolled in a reduced course load when the reduced course load is due to the student's exceptionality, provided that the student is satisfactorily completing the requirements of the educational components of an individualized education plan and is otherwise in compliance with the plan. If the student is not otherwise in compliance with the plan, the student's eligibility may be determined in the same manner as the eligibility of a nonexceptional student who is not satisfying the applicable academic standards. NOTE: "Exceptional student" is a term that has in many other contexts, been replaced by "child with disabilities".

SPECIAL EDUCATION REGULATIONS
Chapter 101
(children age 5-20)

2.11 Parent

The term "parent" means a parent, a guardian, a person acting as a parent of a child or a surrogate parent of a child who has been appointed in accordance with these rules. The term "parent" does not include the State or employees of a state department responsible for the education or care of a student.

2.22 State ward

A "state ward" is a person under the age of 18, or an older person of eligible school age, for whom the State of Maine is legal guardian by court order. The term does not include adult residents of Maine's correctional facilities

2.25 Surrogate parent

A "surrogate parent" is a person appointed to fulfill the duties of a surrogate parent in accordance with Section 10.6 of this rule.

4.3 State Wards

A school unit shall provide special education services to any state ward who requires special education services and who resides within the unit's boundaries in a foster home, group home, therapeutic group home, emergency shelter or residential treatment facility (as defined by Title 20-A, Section 1, Subsection 24-A), state-operated institution, skilled nursing facility or intermediate care facility.

The costs for such services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were provided upon receipt of appropriate statements from the administrative unit and subject to Title 20-A MRSA, Section 15613.

The regional administrator of the responsible state agency or the member of the agency's staff identified as responsible for case management of the state ward and the foster parent or administrator of the residence are entitled to participate in any Pupil Evaluation Team meeting for the state ward.

If a state ward is placed in a residential treatment center, (as defined by Title 20-A, Section 1, Subsection 24-A (D)(3)), the costs for such services shall be paid directly by the Department of Education at 100 percent of the cost during the year in which the services were provided upon receipt of appropriate statements from the residential treatment center and subject to Title 20-A MRSA, Section 15613. Responsibility for the student shall remain with the school administrative unit which placed the student. These responsibilities include development of the student's Individualized Education Program (I.E.P.), annual review of the I.E.P. and a determination of future appropriate programs and placements. The school unit which placed the state ward in a residential treatment center shall retain responsibility for program monitoring, I.E.P. development, and annual review, until the state ward is discharged from the residential treatment center.

When a state ward has moved frequently between school administrative units, and there is a request for the P.E.T. to consider a residential placement of the state ward for educational reasons, the School Administrative Unit (SAU) in which the state ward was last enrolled for a full academic quarter shall be the responsible SAU to consider this request.

10.6 Surrogate Parents

A. Appointment of surrogate parent - Whenever the natural parents or guardian of a student with a disability cannot be identified or located after reasonable efforts, the superintendent of the responsible administrative unit shall notify the Division of Special Services and request the appointment of a surrogate parent. The term "guardian" does not include the State if the student is a state ward.

Whenever a student with a disability is a state ward residing in a foster home licensed by the Department of Human Services, the foster parent shall be recognized as the surrogate parent for the student placed in his/her care and shall meet the criteria at 10.6 C for surrogate parents. There is no need for the Commissioner to appoint the foster parent of a state ward. The administrative unit in which the foster parent resides shall notify the foster parent of the rights and responsibilities of a surrogate parent.

If the school administrative unit or Department of Human Services has reason to believe that a foster parent does not meet the criteria at 10.6 C for appointment as a surrogate parent, the administrative unit or the Department of Human Services shall file with the Department of Education a written objection to the automatic appointment of the foster parent as surrogate parent and a recommendation for the appointment of another individual as the surrogate parent.

The foster parent has the right to challenge such an objection through a due process hearing.

When a state ward is hospitalized, the foster parent who was serving as surrogate parent shall continue in that position, until such time as the student is discharged to a placement other than that foster home. If the hospitalization is long-term, out-of-state psychiatric care, the DHS or the SAU shall request the DOE to appoint a surrogate parent, if the previous foster parent had been serving as a surrogate parent under the automatic appointment process.

Whenever a student with a disability is a state ward and is NOT residing in a licensed foster home or is experiencing multiple placement within a short period of time, the Department of Human Services or the school administrative unit which has educational responsibility for the student shall request the Department of Education to appoint a surrogate parent.

B. Duties of surrogate parents - The surrogate parent is the only person authorized to represent the student in any matters relating to the student's identification, evaluation, educational programming, placement, or the provision of a free appropriate public education.

The representative from the Maine Department of Human Services for a state ward may have access to records and participate in P.E.T. meetings but may not exercise the procedural safeguards under this rule.

C. Criteria for surrogate parent selection - A surrogate parent shall meet the following criteria:

1) Has no interests that conflict with the interests of the student being represented;

2) Has sufficient knowledge and skill to ensure adequate representation of the student; and

3) Not be an employee of a public agency involved in the education or care of the student. The term "public agency" includes, but is not limited to the Department of Education, the Department of Human Services, and the Department of Mental Health/Mental Retardation, the school administrative unit responsible for providing education to the student, an agency operated foster or group home and the school unit of residence of the student's parents. A person who otherwise qualifies to be a surrogate parent under these rules is not an employee of the agency solely because he or she is paid by the agency to serve as a foster parent.

SPECIAL EDUCATION REGULATIONS
(for children age birth-5)
XII. 5. Surrogate Parents

5.1 The regional site Board of Directors shall ensure the rights of student eligible under this rule are protected if:

A. No parent can be identified;

B. The regional site Board of Directors or other service provider cannot, after reasonable efforts, locate the whereabouts of a parent; or

C. The student is a ward of the State of Maine.

5.2 Whenever the biological parent, or legal guardian or person acting as parent of the child cannot be identified or located after reasonable efforts, the regional site Board of Directors will be notified who will in turn inform the Commissioner, who makes recommendation concerning candidates for the responsibility and request the appointment of a surrogate parent.

Whenever a child, age 0-5 with disabilities, is a State ward residing in a foster home licensed by the Department of Human Services, the foster parent shall be recognized as the surrogate parent for the child placed in his/her care. There is no need for the Commissioner to appoint the foster parent of a State ward.

5.3 The regional site Board of Directors shall ensure that any person selected as a surrogate parent:

A. Has no interests that conflict with the interests of the child being represented;

B. Has sufficient knowledge and skill to ensure adequate representation of the child; and

C. Is not an employee of a public agency involved in the provision of services to or care of the child; a person who otherwise qualifies to be surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. The term "public agency" includes the Department of Mental Retardation and the regional site responsible for providing services to the child.

5.4 The surrogate parent may represent a child in all matters relating to:

A. The evaluation and assessment of the child;

B. Determination of eligibility and development and implementation of the child's IFSP, including the early intervention placement, annual evaluations and periodic review of the IFSP;

C. The ongoing provision of early intervention services to the child; and

D. Any other rights under I.D.E.A.

The biological parent, legal guardian or custodian may have access to records and participate in Early Childhood Team meetings but may not exercise the procedural safeguards under this rule if a surrogate parent has been appointed.

APPENDIX III

SUGGESTED CHECKLIST

SURROGATE PARENT ACTIVITIES

This checklist presents suggested activities for surrogate parents. It suggests a possible sequence of activities that would ensure appropriate representation by a surrogate. Not all activities may be necessary or appropriate for a particular child. Individual discretion by the child's surrogate parent will be necessary.

INTRODUCTIONS	DATE OF OCCURRENCE
1. Visited with assigned child at his/her school/ day care provider.	_____
2. Met with child's teachers, principal and day care provider.	_____
3. Reviewed educational records at child's school and day care residence.	_____
4. Met with child's caseworker.	_____
5. Reviewed educational records at state agency.	_____

EVALUATION PROCESS	
1. Received written notice of Pupil Evaluation Team or Early Childhood Team meeting scheduled at a mutually convenient time and place.	_____
2. Attended Pupil Evaluation Team or Early Childhood Team meeting to review evaluations and recommend additional testing as necessary.	_____
3. Received written notice requesting an evaluation of the child prior to evaluation.	_____
4. Received an oral or written explanation of the results of evaluation.	_____

PLACEMENT PROCESS

1. Requested a Pupil Evaluation Team or Early Childhood Team meeting to review child's program and placement. _____

2. Received written notice of Pupil Evaluation Team or Early Childhood Team meeting at a mutually convenient time and place. _____

3. Attended Pupil Evaluation Team or Early Childhood Team and reviewed child's current placement and program. _____

4. Attended Pupil Evaluation Team or Early Childhood Team meeting and assisted in developing a new Individual Education Program (IEP children 5-20) or Individualized Family Service Plan (IFSP children birth - 5). _____

5. Requested a copy of child's IEP or IFSP. _____

CONFLICT RESOLUTION

1. Contacted child's teacher(s) to discuss concerns. _____

2. Expressed concerns in writing to Principal with copies to teacher and Director of Special Education or Regional CDS Site Coordinator. _____

3. Consulted with the Office of Special Education or Regional CDS Site Coordinator or other advocacy groups regarding resolution of concerns. _____

4. Requested a meeting with Director of Special Education, Principal, teacher(s) or Regional CDS Site Coordinator and service providers to resolve concerns. _____

5. Requested mediation with impartial hearing officer. _____

6. Filed complaint against educational agency with Commissioner of Education. _____

7. Requested Due Process Hearing. _____

APPENDIX IV

SAMPLE CASE RECORD A (0-5)

Surrogate Parent: _____ Child's Name: _____

Address: _____ Address: _____

_____ _____

Phone#: _____ Phone#: _____

Date Appointed: _____

Regional Child Development Service Site: _____ Phone#: _____

Regional Child Development Site Coordinator: _____

Regional Child Development Service Coordinator: _____

Date of Contact	Summary of Activity

APPENDIX IV

SAMPLE CASE RECORD B (5-20)

Surrogate Parent: _____ Student's Name: _____

Address: _____ Address: _____

_____ _____

Phone#: _____ Phone#: _____

Date Appointed: _____

Student's School: _____ Phone#: _____

Teacher(s): _____

_____

Principal: _____

Date of Contact	Summary of Activity

APPENDIX V

IEP/IFSP CHECKLIST

The checklist should be used to determine if your child's IEP/IFSP is complete. All of the items listed may not be applicable for your child, but the majority of them should be included.

IEP/IFSP Checklist

	YES	NO	N/A
a) Present Level of Performance			
A description of what your child can do; they include information in these areas:			
- self-help skills (personal maintenance)			
- academic skills (reading, math, etc.)			
- social behaviors (how he/she gets along with others)			
- physical skills (coordination, running, etc.)			
- vocational or pre-vocational skills			
- constraints on performance			
b) Annual Goals			
The goals are based on your child's evaluation(s).			
The annual goals in the IEP/IFSP address all the educational needs of your child.			
The goals set for your child can be accomplished during the school year.			
The annual goals indicate what your child will be able to do when the services specified in the IEP/IFSP have ended.			
c) Short-Term Objectives			
The short-term objectives as written are specific for each annual goal.			
Each objective is written so that it can be measured.			

	YES	NO	N/A
d) Specific Services The IEP/IFSP clearly states what special education and related service(s) your child will receive this school year. The services to be provided and persons who will be providing the services are specified in the IEP/IFSP (example - individual speech therapy three times per week for 1/2 hour each time with speech therapist).			
e) Dates of Service The dates for the beginning of services are clear. When IEP/IFSP services will end for your child are clearly specified.			
f) Evaluation of Progress The method of checking your child's progress includes: a. how it will be checked b. when it will be checked c. who will be responsible for making sure this is done d. who at the school will communicate with you and when			
g) Extent of Involvement with Children without a Disability The time your child will spend in regular education or early childhood programs is specified. Ways that your child will be integrated with children without disabilities is specified. A date was indicated for the review of the IEP/IFSP, not to exceed 12 months.			

***IFSP model form is available by contacting the Office of Special Services, Surrogate Parent Program.**

APPENDIX VI

RESOURCES

Information and Assistance

The following is a partial list of agencies which may be able to provide information and/or assistance with questions about special education and the Pupil Evaluation Team or Early Childhood Team process.

Maine Department of Education
Office of Special Services
#23 State House Station
Augusta, ME 04333 — 287-5950

Child Development Services
#146 State House Station
Augusta, ME 04333 — 287-3272

Autism Society of Maine
P.O. Box 597
Gardiner, ME 04345 — 582-7727

Gov. Baxter School for the Deaf
P.O. Box 799
Portland, ME 04104 (Voice and TTY) — 781-3165

Learning Disabilities Association of Maine
P.O. Box 385
2 East Mechanic Street
Gardiner, ME 04345 — 582-2866
437-9245
1-800-325-0220 (SPIN office)

Maine Head Injury Foundation
P.O. Box 2224
Augusta, ME 04330-2224 — 626-0022

Maine Foster Parents Association
11 Liberty Drive
Hermon, ME 04401 — 848-7537 — 1-800-734-3909

Special Needs Parents Information Network (SPIN)
P.O. Box 2067
Augusta, ME 04338-2067 — 1-800-870-7746 — 582-2504

Maine Advocacy Services
P.O. Box 2007
32 Winthrop Street
Augusta, ME 04338-2007

1-800-452-1948

626-2774 (Voice or TTY)
621-1405 (TTY - evenings & weekends)

Legal Assistance

These agencies may be able to assist with mediation, complaints, and due process hearings.

Maine Civil Liberties Union
233 Oxford Street
Portland, ME 04101 — 774-5444

Pine Tree Legal Assistance

Portland	88 Federal Street, P.O. Box 547	774-8211
Augusta	39 Green Street P.O. Box 2429	622-4731
Bangor	61 Main Street	942-8241
Machias	12 Cooper Street	255-8656
Presque Isle	572 Main Street	764-4349

Appendix VII
Maine Surrogate Parent Program
Volunteer Application

Please review the enclosed material prior to completing this application.

1. Name:_____

2. Address:_____

_____

Employed by:_____

3. Home Telephone:_____ Work Telephone:_____

4. What is your experience and/or education relating to special education and/or children with disabilities?

_____

_____

5. Are you proficient in any foreign language or alternative communication system (sign language, rebus symbols, etc.)?

_____

6. Do you own or have access to transportation?

_____

7. Can you make a minimum commitment of one year to a child assigned to you?

_____

8. Are you aware of any conflicts of interest that could affect your serving as a surrogate parent?

Yes___ No___

If Yes, please explain:_____

_____

(Over)

9. Do you have any preferences or exceptions regarding location of educational agency, type of disability, length of appointment or your availability to attend meetings relating to a child assigned to you? Please specify.

_____

_____

10. Are you familiar with: Maine Special Education Law and Regulations, the Pupil Evaluation Team Process or the Early Childhood Team Process, and the Individuals with Disabilities Education Act (IDEA)?? Do you feel you need further training in this area? Please explain.

_____

_____

11. State briefly why you are interested in becoming a surrogate parent.

_____

_____

_____

12. List at least two (2) references:

Name	Address	Telephone Number	Relationship

13. How did you find out about the Maine Surrogate Parent Program?

_____

I certify that the above information is correct, that I am a resident of Maine and over 18 years of age.

_____
Signature Date

Please return to:

Department of Education
Surrogate Parent Program
23 State House Station
Augusta, ME 04333
Telephone: (207) 287-5950

Appendix VIII

Request for Appointment of Surrogate Parent

1. Child's Name: _____ DOB: _____
   Address: _____ Phone: _____
   _____
   Name of: _____ foster parent(s)
   _____ house parents or
   _____ other (please specify relationship)

2. Is child a state ward? Yes___ No___ If NO, go to question #4. Child welfare status code: _____

3. Please identify the child's social worker, regional office, and phone number and go to question #5.

Name: _____ Office: _____ Phone #: _____

4. Are the child's parents unknown or can they not be located? Please explain and attach documentation of efforts to locate.

5. Please identify the child's (a) school, principal, teacher(s) or (b) regional CDS site, site coordinator, and case manager:

(a) School: _____ Address: _____

Principal: _____ Phone #: _____

Teacher(s): _____ _____

(b) CDS Site: _____ Address: _____

CDS Coordinator: _____ Phone#: _____

CDS Case Manager: _____

6. Please identify the child's disability: _____

(Over)

7. Please identify the child's current programming and/or placement:

___referred to PET/ECT only	___resource room	___composite classroom
___self-contained classroom	___public special day school	___private day school
___residential treatment center	___home/hospital bound	___day care
___no programming	___other -(identify)	

8. Identify any special considerations for appointing a surrogate parent (e.g., Alternative Communication System, Foreign Language, Minority Group).

9. Can you recommend any individual that could serve as this child's surrogate parent?

Name:_____ Relationship to Child:_____

Address:_____

Telephone #:_____

10. Individual making referral:_____

Title:_____ Phone #:_____

Date:_____

Please return to: Department of Education
Surrogate Parent Program
23 State House Station
Augusta, ME 04333

Appendix IX
PARENTAL RIGHTS AND PROCEDURAL SAFEGUARD

PRIOR NOTICE TO PARENTS

Your school district must provide you with prior written notice each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to the child.

The notice must include:

(1) A full explanation of all of the procedural safeguards available to you;

(2) A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of any options the school considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the school uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the school's proposal or refusal.

The notice must be written in language understandable to the general public, and provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school must take steps to insure that the notice is translated orally or by other means to you in your native language or other mode of communication; that you understand the content of the notice, and that there is written evidence that these requirements have been met.

PARENT CONSENT

Your school must obtain your consent before conducting a preplacement evaluation or initial placement of your child in a program providing special education and related services. Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to you or your child.

If you refuse to provide your consent for a preplacement evaluation or initial placement of your child in a program providing special education and related services; your school may use the due process hearing procedures to determine whether your child may be evaluated or initially provided special education and related services without your consent. If the hearing officer upholds your school, it may evaluate or initially provide special education and related services to your child without your consent, subject to the your rights to appeal the decision and to have your child remain in his or her present educational placement during the pendency of any administrative or judicial proceeding.

INDEPENDENT EDUCATIONAL EVALUATION

You have the right to an independent educational evaluation at <u>public</u> expense if you disagree with an evaluation obtained by your school. However, your school may initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense. If the parent obtains an independent educational evaluation at <u>private</u> expense, the results of the evaluation must be considered by your school in any decision made with respect to the provision of a free appropriate public education to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Your school shall provide you, on request, information about where an independent educational evaluation may be obtained.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school uses when it initiates an evaluation.

SUPERINTENDENT COMPLAINTS

You have the right to file a written complaint with the superintendent of the administrative unit responsible for the education of your son or daughter if you have reason to believe that the administrative unit is not in compliance with these special education regulations. The superintendent, or a designee, shall then appoint a person to investigate your complaint and to recommend to the superintendent, within 30 days of the receipt of the written complaint, any corrective action necessary to ensure compliance.

DEPARTMENT OF EDUCATION COMPLAINTS

You have the right to file a signed, written complaint with the Commissioner of the Department of Education if you have reason to believe that the administrative unit responsible for the education of your son or daughter is not in compliance with these special education regulations.

The Department must initiate and complete, within 60 days of the receipt of the written complaint, an investigation and a determination of whether your school has complied with these special education regulations.

If your school is determined to be in non-compliance, the Department will develop a corrective action plan to resolve the complaint.

MEDIATION

You or the school have the right to request the Department of Education to provide mediation services if you and the school are unable to agree upon the identification, evaluation, educational program, placement or the provision of a free, appropriate public education of your son or daughter.

IMPARTIAL DUE PROCESS HEARING

You or your school may initiate a hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child.

The hearing will be conducted by the Maine Department of Education.

The Department must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or your school initiate a due process hearing.

A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department of Education to serve as a hearing officer.)

The Department maintains a list of the persons who serve as hearing officers. The list includes a statement of the qualifications of each of those persons.

The Department shall ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

The decision made in a due process hearing is final, unless a party to the hearing brings a civil action under the procedures described below.

DUE PROCESS HEARING RIGHTS

Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (After deleting any personally identifiable information, the Department shall transmit those findings and decisions to the State advisory panel and make them available to the public.)

You must be given the right to have your child present, and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

CIVIL ACTION

Any party aggrieved by the findings and decision made in a hearing has the right to appeal the decision in State or Federal Court.

CHILD'S STATUS DURING PROCEEDINGS

During the pendency of any due process hearing or appeal of a hearing, unless you and your school agree otherwise, your child must remain in his or her present educational placement.

If the hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.

AWARD OF ATTORNEYS' FEES

In any action or proceeding brought under Part B of the Individuals with Disabilities Education Act, the court may award reasonable attorneys' fees to the parents or guardians of a child or youth with disabilities who is the prevailing party.

SURROGATE PARENTS

Each school shall ensure that an individual is assigned to act as a surrogate for the parents of a child when no parent can be identified; the school,

after reasonable efforts, cannot discover the whereabouts of a parent; or the child is a ward of the State. The Department must have a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child.

The Department may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of an agency which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (An individual is not disqualified as an agency employee from appointment as a surrogate solely because he or she is paid by the Department to serve as a surrogate parent.)

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public provision of a free appropriate public education to the child.

ACCESS TO RECORDS

Your school must permit you to inspect and review any education records relating to your child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child, which are collected, maintained, or used by the school under Part B. The school must comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of your child, and in no case more than 45 days after the request has been made.

Your right to inspect and review education records under this section includes:

(1) The right to a response from the participating school to reasonable requests for explanations and interpretations of the records;

(2) Your right to have your representative inspect and review the records; and

(3) Your right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to your child unless the school has been advised that you do not have the authority under applicable Maine law governing such matters as guardianship, separation, and divorce.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school must provide you on request a list of the types and locations of education records collected, maintained, or used by the school.

FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

The school may not charge a fee to search for or to retrieve information under this part, but may charge you a fee for copies of records which are made for you under this rule if the fee does not effectively prevent you from exercising your right to inspect and review those records.

RECORD OF ACCESS

The school must keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in education records collected, maintained, or used under these rules is inaccurate or misleading or violates the privacy or other rights of your child, you may request that the school that maintains the information to amend the information.

The school must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the school decides to refuse to amend the information in accordance with the request it must inform you of the refusal and of your right to a hearing as set forth below.

The school shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons you disagree with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of your child as long as the record or contested portion is maintained by the school; if the records of your child or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

DEFINITIONS

"Consent" means that: (a) You have been fully informed of all information relevant to the activity for which consent is sought, in your native language or other mode of communication; (b) You understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and you understand that the granting of consent is voluntary on your part and may be revoked at any time.

"Evaluation" means procedures used in accordance with 34 CFR §§300.530 -- 300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school responsible for the education of the child in question. "Independent educational evaluation at public expense" means that the school either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to you.

If you have any questions regarding your rights please contact your local special education director or the Maine Department of Education, Division of Special Services.